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 CHARCOAL COMPANION, INCORPORATED

FILED

JUL 29 2010

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

ADR

CHARCOAL COMPANION,  
 INCORPORATED,

Plaintiff,

v.

LIFETIME BRANDS, INC., and  
 TARGET CORPORATION,

Defendants.

Case. No.

C10-03337

COMPLAINT FOR  
PATENT INFRINGEMENT

(JURY TRIAL DEMANDED)

GO 44 SEC. N  
 NOTICE OF ASSIGNMENT  
 TO MAGISTRATE JUDGE

17 Plaintiff, Charcoal Companion, Incorporated ("CCI"), hereby alleges for its  
 18 complaint against Defendants, Lifetime Brands, Inc. ("Lifetime Brands") and Target  
 19 Corporation ("Target"), as follows:

## JURISDICTION

21 1. This is a civil action arising under the patent laws of the United States, 35  
 22 U.S.C. §100, *et seq.* This Court has subject matter jurisdiction over this action pursuant  
 23 to 28 U.S.C. §§1331 and 1338(a).

## VENUE

25 2. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and  
 26 1400(b) because Defendants Lifetime Brands and Target Corporation committed acts of  
 27 patent infringement in this district.  
 28

**INTRADISTRICT ASSIGNMENT**

3. This case is exempt from intradistrict assignment pursuant to Civil L. R. 3-2(c) because it includes intellectual property claims.

**PARTIES**

4. Plaintiff CCI is a California corporation having its principal business offices located at 5905 Christie Avenue, Emeryville, California 94608.

5. On information and belief, Defendant Lifetime Brands is a Delaware corporation having its principal business offices located at 1000 Stewart Avenue, Garden City, New York 11530.

6. On information and belief, Defendant Target is a Minnesota corporation having its principal business offices located at 1000 Nicollet Mall, Minneapolis, Minnesota 55403.

**FACTUAL BACKGROUND**

7. Plaintiff CCI designs, markets, and distributes barbecue accessories products.

8. Plaintiff CCI owns U.S. Patent No. D506,352 for a COMBINATION ROASTING UTENSIL AND LIQUID INFUSER (the "352 Patent"), which was duly and legally issued by the United States Patent and Trademark Office on June 21, 2005, a copy of which is attached hereto as **Exhibit A**.

9. Plaintiff CCI owns U.S. Patent No. D522,807 for a COMBINATION ROASTING UTENSIL AND LIQUID INFUSER (the "807 Patent"), which was duly and legally issued by the United States Patent and Trademark Office on June 13, 2006, a copy of which is attached hereto as **Exhibit B**.

10. Plaintiff CCI owns U.S. Patent No. D506,362 for a BARBEQUE BASKET FOR CORN AND THE LIKE (the "362 Patent"), which was duly and legally issued by the United States Patent and Trademark Office on June 21, 2005, a copy of which is attached hereto as **Exhibit C**.

11. Plaintiff CCI owns U.S. Patent No. D521,821 for a BARBEQUE BASKET

1 FOR CORN AND THE LIKE (the “821 Patent”), which was duly and legally issued by the  
2 United States Patent and Trademark Office on May 30, 2006, a copy of which is  
3 attached hereto as **Exhibit D**.

4 12. Upon information and belief, Defendant Lifetime Brands markets,  
5 distributes, and sells a variety of houseware products, including cooking accessories for  
6 kitchen and outdoor use, under different household brands, including KitchenAid. Upon  
7 information and belief, Lifetime Brands sells its houseware products primarily to retail  
8 outlets, including mass market retail outlets such as Defendant Target.

9 13. Upon information and belief, Defendant Target is a mass market retail  
10 outlet having retail stores throughout the United States, including in this judicial district.

11 14. Upon information and belief, Defendant Lifetime Brands has made,  
12 imported, used, offered to sell, and/or sold, and continues to make, import, use, offer to  
13 sell, and/or sell a vertical chicken roaster product, under the KitchenAid brand  
14 (“KitchenAid Chicken Roaster”), covered by the CCI ‘352 and ‘807 Patents, including  
15 sales of KitchenAid Chicken Roasters to Defendant Target. The KitchenAid Chicken  
16 Roaster is shown in **Exhibit E** attached hereto.

17 15. Upon information and belief, Defendant Target has used, offered to sell,  
18 and/or sold, and continues to use, offer to sell, and/or sell KitchenAid Chicken Roaster  
19 purchased from Defendant Lifetime Brands.

20 16. Upon information and belief, Defendants Lifetime Brands has made,  
21 imported, used, offered to sell, and/or sold, and continues to make, import, use, offer to  
22 sell, and/or sell a corn grilling basket product, under the KitchenAid brand (“KitchenAid  
23 Corn Basket”), covered by the CCI ‘362 and ‘821 Patents, including sales of KitchenAid  
24 Corn Baskets to Defendant Target. The KitchenAid Corn Basket is shown in **Exhibit F**  
25 attached hereto.

26 17. Upon information and belief, Defendant Target has used, offered to sell,  
27 and/or sold, and continues to use, offer to sell, and/or sell KitchenAid Corn Baskets  
28 purchased from Defendant Lifetime Brands.

1 18. Plaintiff CCI has not authorized Defendants Lifetime Brands and Target, or  
2 either of them, to make, import, use, offer to sell, and/or sell either the KitchenAid  
3 Chicken Roaster or the KitchenAid Corn Basket.

4 **FIRST CLAIM FOR RELIEF:**

5 **PATENT INFRINGEMENT – 35 U.S.C. §271, et seq.**

6 19. Plaintiff CCI incorporates the allegations of paragraphs 1-18 above.

7 20. Upon information and belief, Defendants Lifetime Brands and Target have  
8 been, and currently are, infringing the '352 Patent by making, using, importing, selling,  
9 and/or offering for sale the KitchenAid Chicken Roaster.

10 21. As a direct and proximate consequence of Defendants Lifetime Brands'  
11 and Target's infringement of the '352 Patent, Plaintiff CCI has suffered and will continue  
12 to suffer irreparable injury and damages in an amount not yet determined for which  
13 Plaintiff CCI is entitled to relief.

14 22. Upon information and belief, Defendants Lifetime Brands and Target have  
15 been on actual or constructive notice of the '352 Patent, and infringement of the '352  
16 Patent by Defendants Lifetime Brands and Target has been willful and deliberate.

17 23. Pursuant to 35 U.S.C. § 284, Plaintiff CCI is entitled to damages, and to  
18 treble damages on grounds that, on information and belief, the infringement by  
19 Defendants Lifetime Brands and Target was willful and deliberate.

20 24. Pursuant to 35 U.S.C. § 283, Plaintiff CCI is entitled to temporary and  
21 permanent injunctions enjoining Defendants Lifetime Brands and Target from further  
22 infringing the '352 Patent.

23 25. Pursuant to 35 U.S.C. § 289, Plaintiff CCI is entitled to Defendants Lifetime  
24 Brands' and Target's profits derived from infringing the '352 Patent.

25 **SECOND CLAIM FOR RELIEF:**

26 **PATENT INFRINGEMENT – 35 U.S.C. §271, et seq.**

27 26. Plaintiff CCI incorporates the allegations of paragraphs 1-18 above.

28 27. Upon information and belief, Defendants Lifetime Brands and Target have



1 been, and currently are, infringing the '807 Patent by making, using, importing, selling,  
2 and/or offering for sale the KitchenAid Chicken Roaster.

3 28. As a direct and proximate consequence of Defendants Lifetime Brands'  
4 and Target's infringement of the '807 Patent, Plaintiff CCI has suffered and will continue  
5 to suffer irreparable injury and damages in an amount not yet determined for which  
6 Plaintiff CCI is entitled to relief.

7 29. Upon information and belief, Defendants Lifetime Brands and Target have  
8 been on actual or constructive notice of the '807 Patent, and infringement of the '807  
9 Patent by Defendants Lifetime Brands and Target has been willful and deliberate.

10 30. Pursuant to 35 U.S.C. § 284, Plaintiff CCI is entitled to damages, and to  
11 treble damages on grounds that, on information and belief, the infringement by  
12 Defendants Lifetime Brands and Target was willful and deliberate.

13 31. Pursuant to 35 U.S.C. § 283, Plaintiff CCI is entitled to temporary and  
14 permanent injunctions enjoining Defendants Lifetime Brands and Target from further  
15 infringing the '807 Patent.

16 32. Pursuant to 35 U.S.C. § 289, Plaintiff CCI is entitled to Defendants Lifetime  
17 Brands' and Target's profits derived from infringing the '807 Patent.

18 **THIRD CLAIM FOR RELIEF:**

19 **PATENT INFRINGEMENT – 35 U.S.C. §271, et seq.**

20 33. Plaintiff CCI incorporates the allegations of paragraphs 1-18 above.

21 34. Upon information and belief, Defendants Lifetime Brands and Target have  
22 been, and currently are, infringing the '362 Patent by making, using, importing, selling,  
23 and/or offering for sale the KitchenAid Corn Basket.

24 35. As a direct and proximate consequence of Defendants Lifetime Brands'  
25 and Target's infringement of the '362 Patent, Plaintiff CCI has suffered and will continue  
26 to suffer irreparable injury and damages in an amount not yet determined for which  
27 Plaintiff CCI is entitled to relief.

28 36. Upon information and belief, Defendants Lifetime Brands and Target have

1 been on actual or constructive notice of the '362 Patent, and infringement of the '362  
2 Patent by Defendants Lifetime Brands and Target has been willful and deliberate.

3 37. Pursuant to 35 U.S.C. § 284, Plaintiff CCI is entitled to damages, and to  
4 treble damages on grounds that, on information and belief, the infringement by  
5 Defendants Lifetime Brands and Target was willful and deliberate.

6 38. Pursuant to 35 U.S.C. § 283, Plaintiff CCI is entitled to temporary and  
7 permanent injunctions enjoining Defendants Lifetime Brands and Target from further  
8 infringing the '362 Patent.

9 39. Pursuant to 35 U.S.C. § 289, Plaintiff CCI is entitled to Defendants Lifetime  
10 Brands' and Target's profits derived from infringing the '362 Patent.

11 **FOURTH CLAIM FOR RELIEF:**

12 **PATENT INFRINGEMENT – 35 U.S.C. §271, et seq.**

13 40. Plaintiff CCI incorporates the allegations of paragraphs 1-18 above.

14 41. Upon information and belief, Defendants Lifetime Brands and Target have  
15 been, and currently are, infringing the '821 Patent by making, using, importing, selling,  
16 and/or offering for sale the KitchenAid Corn Basket.

17 42. As a direct and proximate consequence of Defendants Lifetime Brands'  
18 and Target's infringement of the '821 Patent, Plaintiff CCI has suffered and will continue  
19 to suffer irreparable injury and damages in an amount not yet determined for which  
20 Plaintiff CCI is entitled to relief.

21 43. Upon information and belief, Defendants Lifetime Brands and Target have  
22 been on actual or constructive notice of the '821 Patent, and infringement of the '821  
23 Patent by Defendants Lifetime Brands and Target has been willful and deliberate.

24 44. Pursuant to 35 U.S.C. § 284, Plaintiff CCI is entitled to damages, and to  
25 treble damages on grounds that, on information and belief, the infringement by  
26 Defendants Lifetime Brands and Target was willful and deliberate.

27 45. Pursuant to 35 U.S.C. § 283, Plaintiff CCI is entitled to temporary and  
28 permanent injunctions enjoining Defendants Lifetime Brands and Target from further

1 infringing the '821 Patent.

2 46. Pursuant to 35 U.S.C. § 289, Plaintiff CCI is entitled to Defendants Lifetime  
3 Brands' and Target's profits derived from infringing the '821 Patent.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff CCI requests that this Court enter judgment in its favor  
6 against Defendants Lifetime Brands and Target as follows:

7 47. Declaring that Defendants Lifetime Brands and Target have infringed the  
8 '352, '807, '362, and '821 Patents;

9 48. Declaring that such infringement by Defendants Lifetime Brands and Target  
10 has been willful and deliberate;

11 49. Preliminarily and permanently enjoining Defendants Lifetime Brands and  
12 Target, including their respective officers, directors, agents, employees, parents, and  
13 subsidiaries, and all others acting or controlled by or through either or both Defendants,  
14 or acting in concert or participating with either or both Defendants, from making, using,  
15 causing to be used, selling, offering to sell, and importing into the United States any  
16 goods that directly infringe or contributorily infringe the '352, '807, '362, and '821 Patents,  
17 or from inducing or causing others to infringe the '352, '807, '362, and '821 Patents,  
18 pursuant to 35 U.S.C. § 283;

19 50. That Plaintiff CCI be awarded compensatory damages according to proof  
20 on account of such infringements in accordance with 35 U.S.C. §284, and pre-judgment  
21 and post-judgment interest on such award;

22 51. That treble damages be assessed against Defendants Lifetime Brands and  
23 Target for willful infringement pursuant to 35 U.S.C. §284;

24 52. That CCI be awarded Defendants Lifetime Brands' and Target's total profit  
25 on account of such infringements under 35 U.S.C. §289, and pre-judgment and post-  
26 judgment interest on such award;

27 53. Awarding Plaintiff CCI reasonable attorneys fees pursuant to 35 U.S.C. §  
28 285; and

## DEMAND FOR JURY TRIAL

## CERTIFICATION OF INTERESTED ENTITIES OR PARTIES

**BEESON SKINNER BEVERLY, LLP**

8



**EXHIBIT A**

**EXHIBIT A**



US00D506352S

(12) **United States Design Patent** (10) **Patent No.:** **US D506,352 S**  
**Dow et al.** (45) **Date of Patent:** **\*\* Jun. 21, 2005**

(54) **COMBINATION ROASTING UTENSIL AND LIQUID INFUSER**

(75) **Inventors:** **Shannon Dow, Berkeley, CA (US); Sharon Ellen Kallenberger, Alameda, CA (US)**

(73) **Assignee:** **Charcoal Companion Incorporated, Oakland, CA (US)**

(\*\*) **Term:** **14 Years**

(21) **Appl. No.:** **29/212,967**

(22) **Filed:** **Sep. 10, 2004**

(51) **LOC (8) Cl. .... 07-02**

(52) **U.S. Cl. .... D7/361**

(58) **Field of Search .... D7/354, 357, 359, D7/360, 361, 409; 99/345, 347, 419, 422, 448; 219/732, 735; D28/61**

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*Primary Examiner*—Caron D. Veynar

*Assistant Examiner*—Vy Nguyen

(74) *Attorney, Agent, or Firm*—Donald L. Beeson

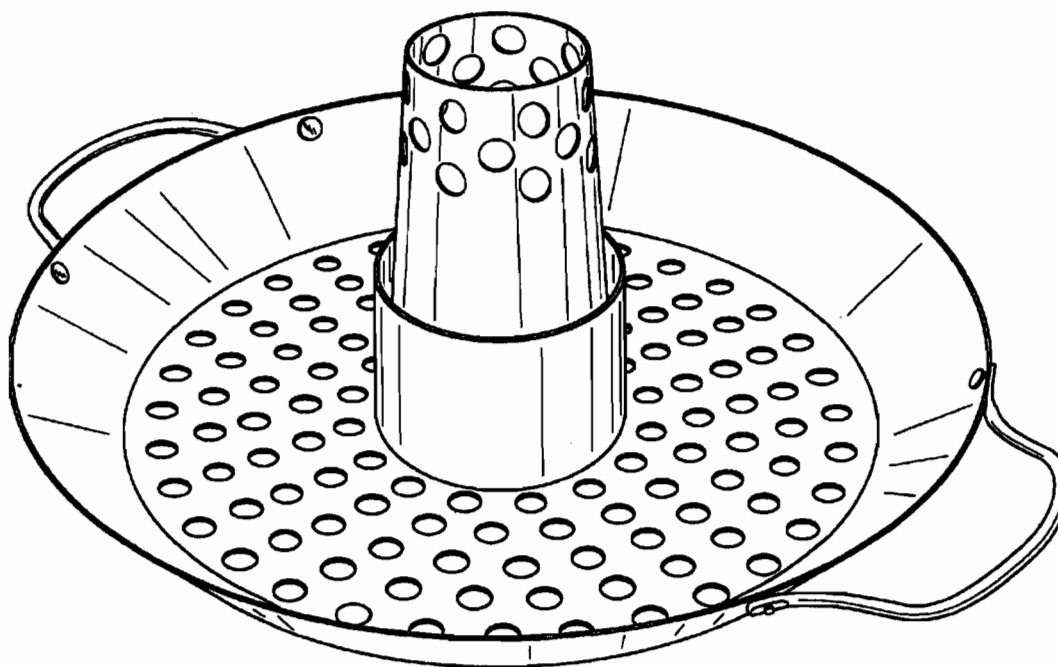
(57) **CLAIM**

The ornamental design for a combination roasting utensil and liquid infuser, as shown and described.

**DESCRIPTION**

FIG. 1 is a top perspective view of a combination roasting utensil and liquid infuser showing our new design;  
 FIG. 2 is a front elevational view thereof;  
 FIG. 3 is a rear elevational view thereof;  
 FIG. 4 is a left side elevational view thereof;  
 FIG. 5 is a right side elevational view thereof;  
 FIG. 6 is a top plan view thereof; and,  
 FIG. 7 is a bottom plan view thereof.

**1 Claim, 5 Drawing Sheets**

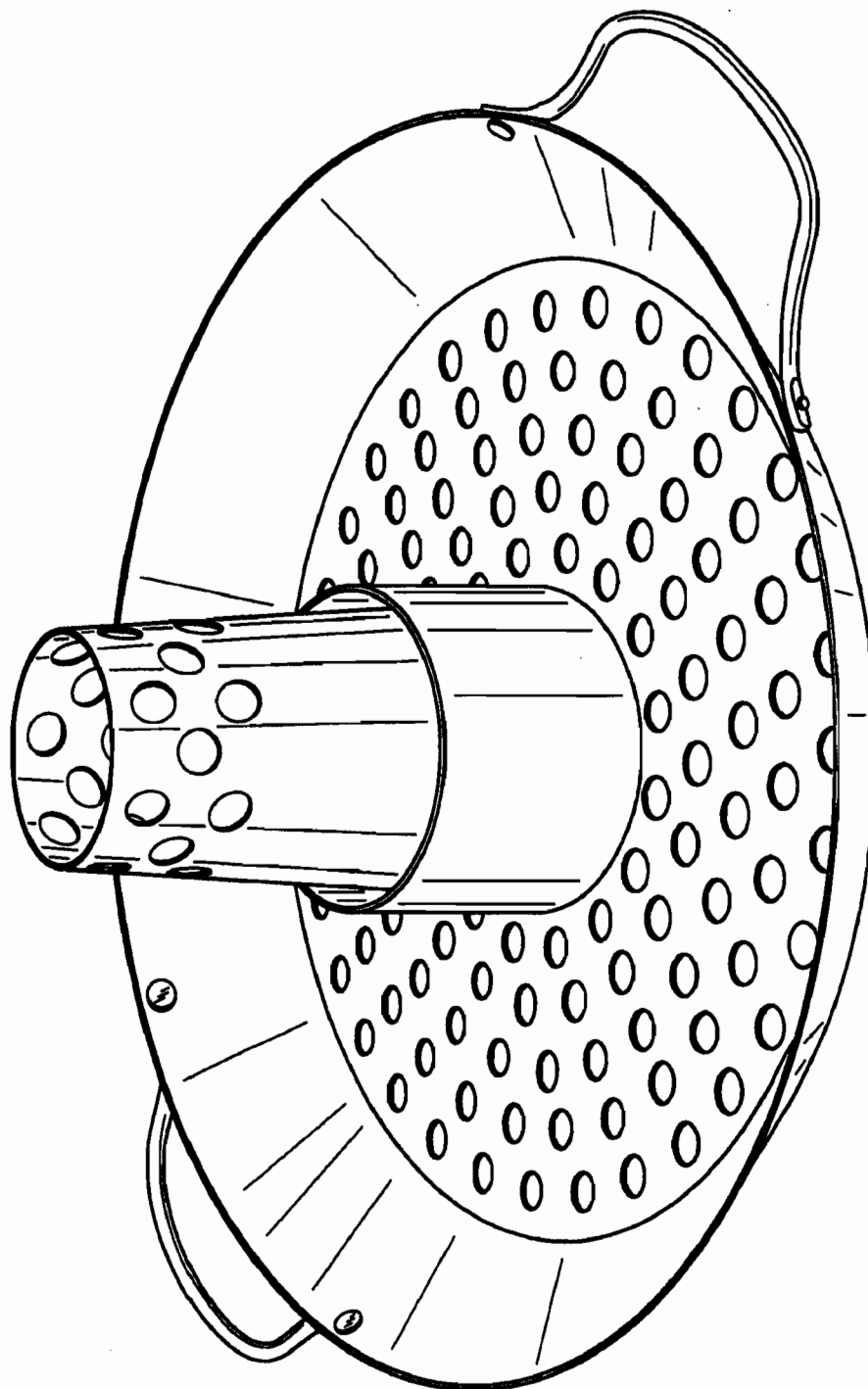


**U.S. Patent**

**Jun. 21, 2005**

**Sheet 1 of 5**

**US D506,352 S**



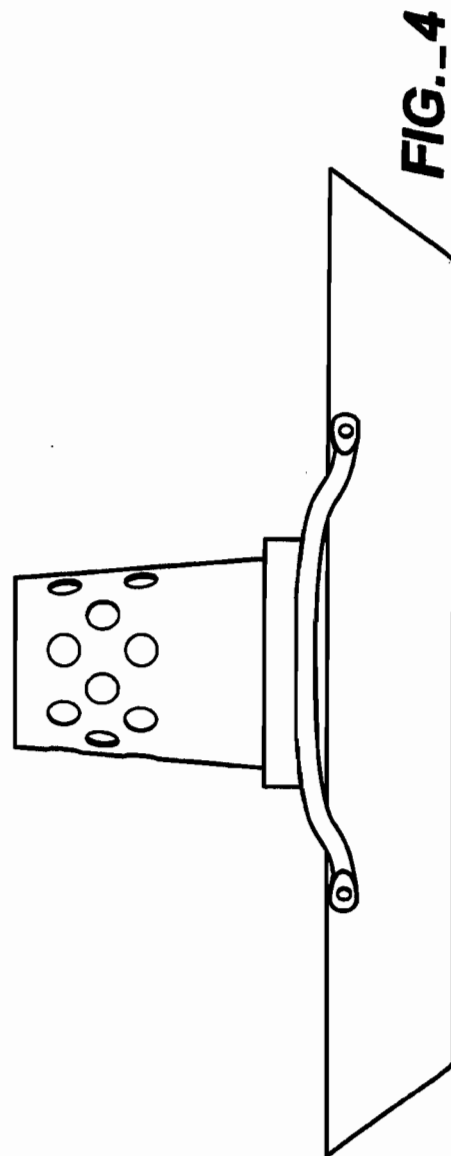
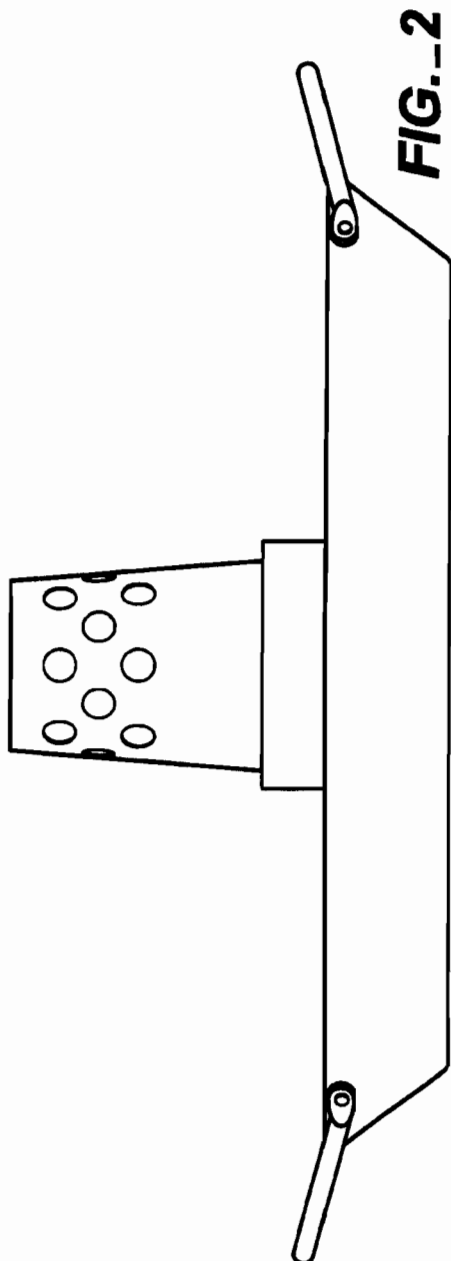
**FIG. 1**

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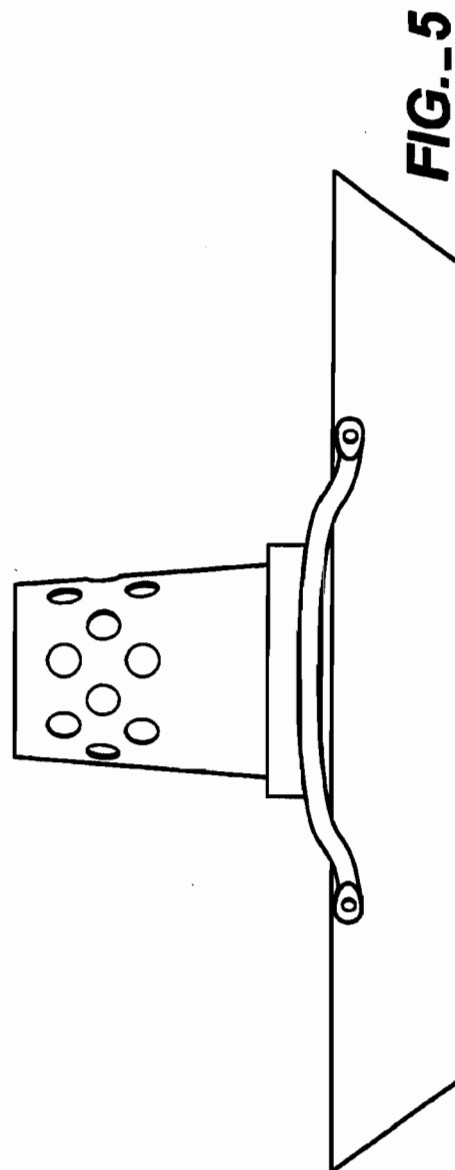
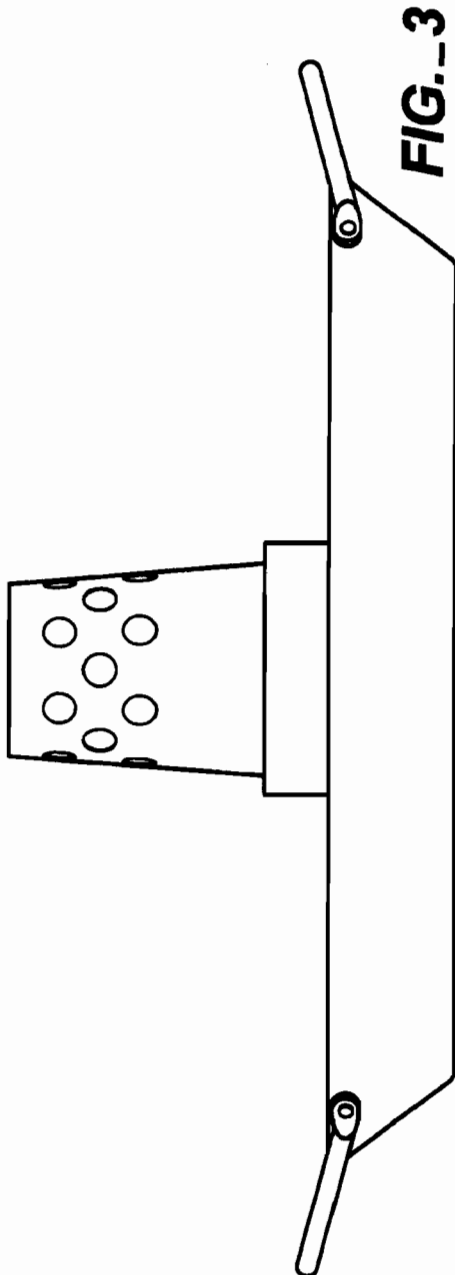


**U.S. Patent**

**Jun. 21, 2005**

**Sheet 3 of 5**

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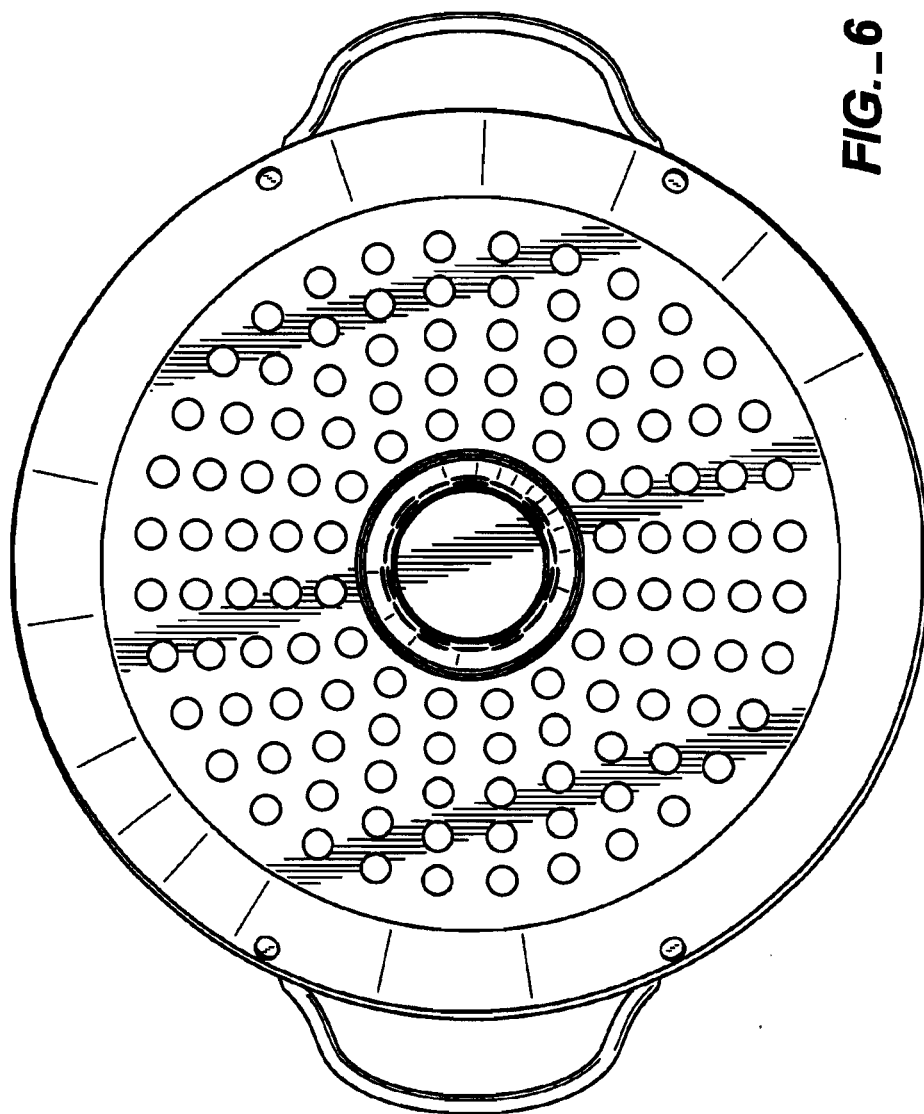


**U.S. Patent**

**Jun. 21, 2005**

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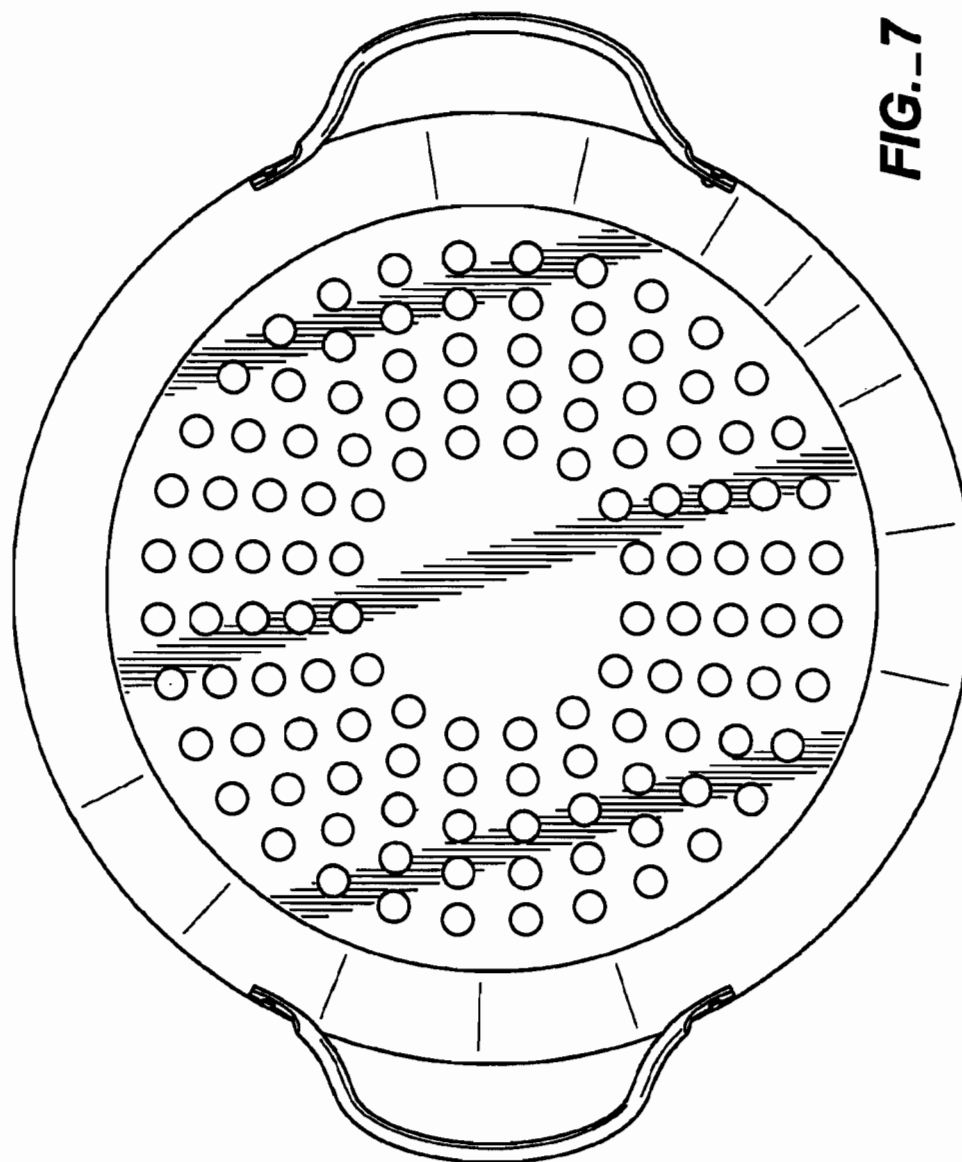
**FIG. 6**

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## EXHIBIT B

EXHIBIT B





US00D522807S

(12) **United States Design Patent** (10) **Patent No.:** **US D522,807 S**  
**Dow et al.** (45) **Date of Patent:** **\*\* Jun. 13, 2006**

(54) **COMBINATION ROASTING UTENSIL AND LIQUID INFUSER**

(75) Inventors: **Shannon Dow**, Berkeley, CA (US);  
**Sharon Ellen Kallenberger**, Alameda, CA (US)

(73) Assignee: **Charcoal Companion Incorporated**, Emeryville, CA (US)

(\*\*) Term: **14 Years**

(21) Appl. No.: **29/232,676**

(22) Filed: **Jun. 21, 2005**

**Related U.S. Application Data**

(63) Continuation of application No. 29/212,967, filed on Sep. 10, 2004, now Pat. No. Des. 506,532.

(51) **LOC (8) Cl.** ..... **07-02**

(52) **U.S. Cl.** ..... **D7/409; D7/361**

(58) **Field of Classification Search** ..... **D7/354-361, D7/409, 550.1, 553.1, 553, 553.7, 566, 586-588; D28/61; 219/732, 735; 206/558; 220/574, 220/575; 99/345, 347, 419, 422, 448**  
 See application file for complete search history.

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*Primary Examiner*—Caron D. Veynar

*Assistant Examiner*—Ricky Pham

(74) *Attorney, Agent, or Firm*—Donald L. Beeson; Beeson Skinner Beverly

(57) **CLAIM**

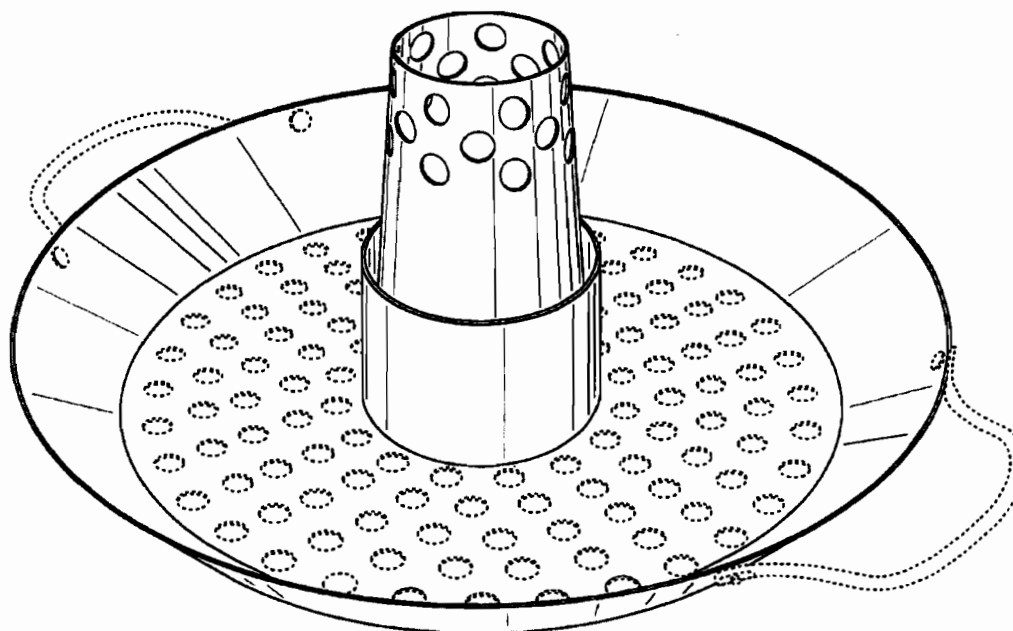
The ornamental design for a combination roasting utensil and liquid infuser, as shown and described.

**DESCRIPTION**

FIG. 1 is an enlarged top perspective view of a combination roasting utensil and liquid infuser showing our new design; FIG. 2 is a front elevational view thereof; FIG. 3 is a rear elevational view thereof; FIG. 4 is a left side elevational view thereof; FIG. 5 is a right side elevational view thereof; FIG. 6 is a top plan view thereof; and, FIG. 7 is a bottom plan view thereof.

The broken lines shown in FIGS. 1-7 are for illustrative purposes only and form no part of the claimed design.

**1 Claim, 5 Drawing Sheets**



U.S. Patent

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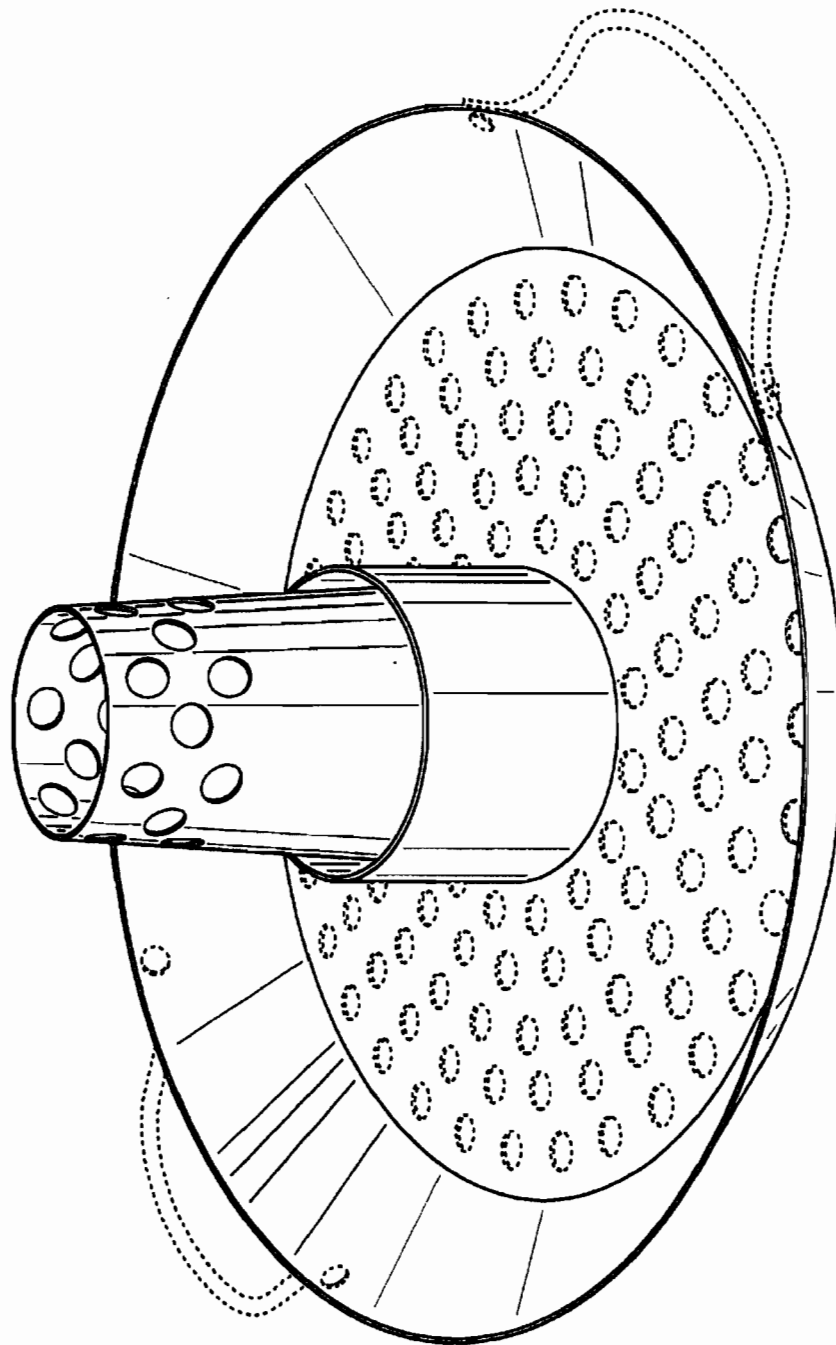


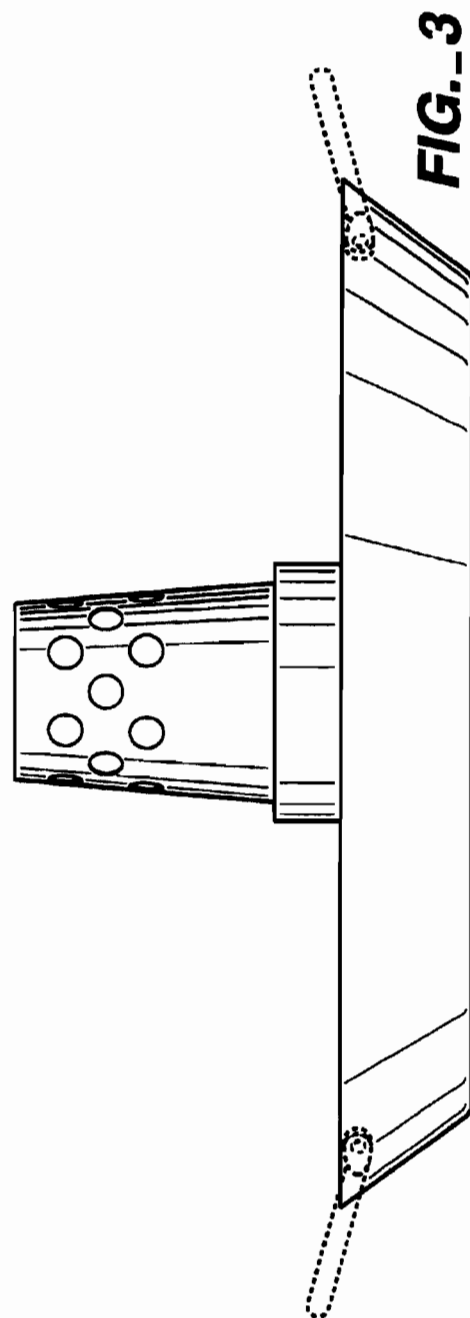
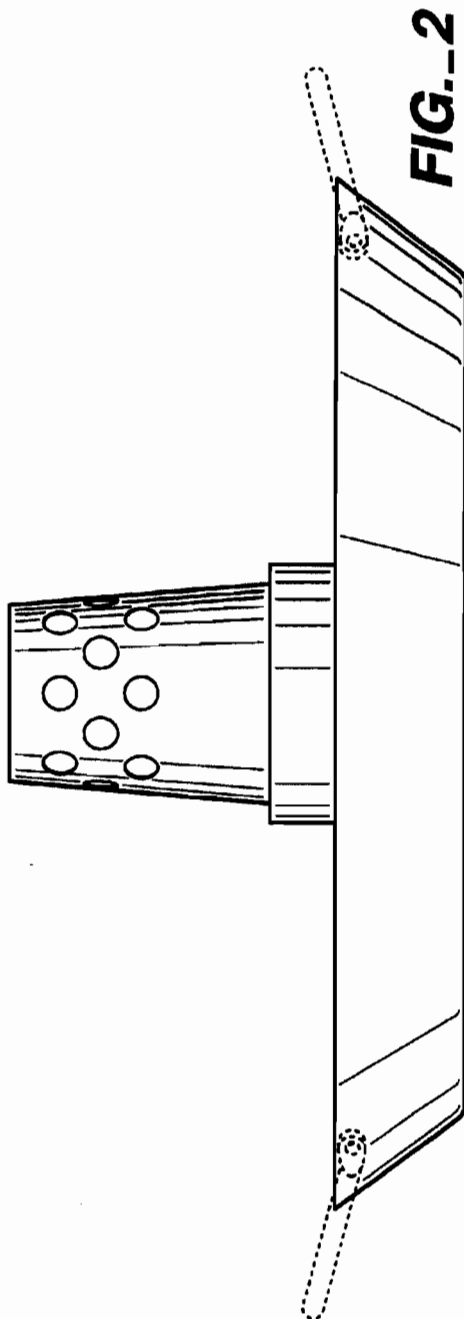
FIG. 1

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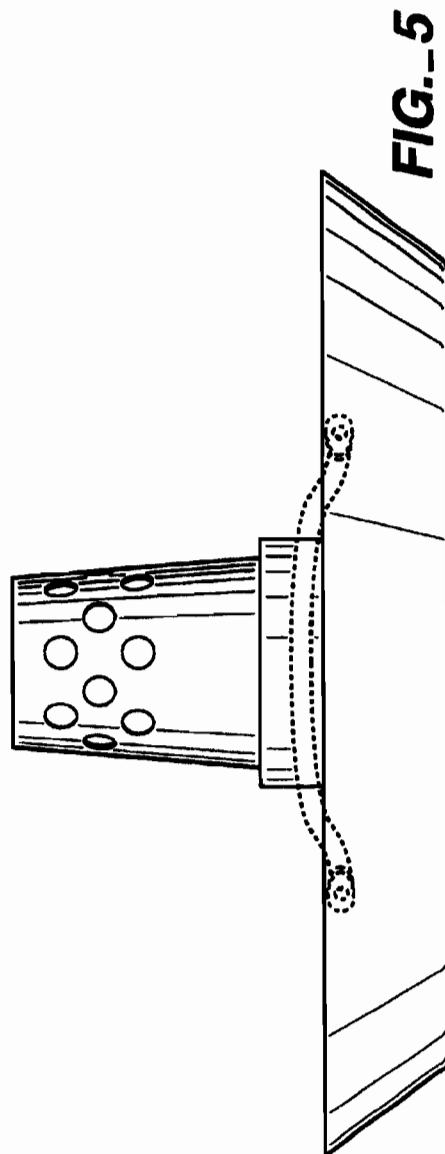
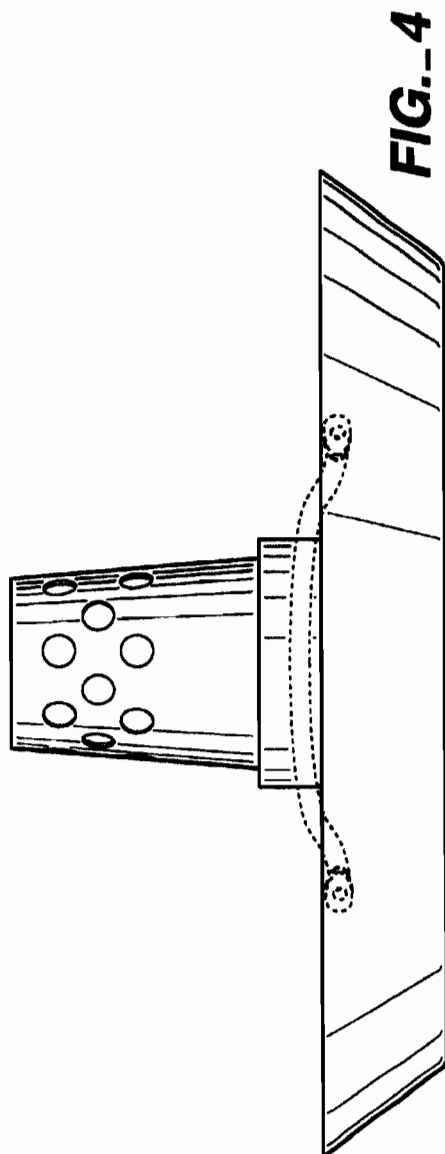


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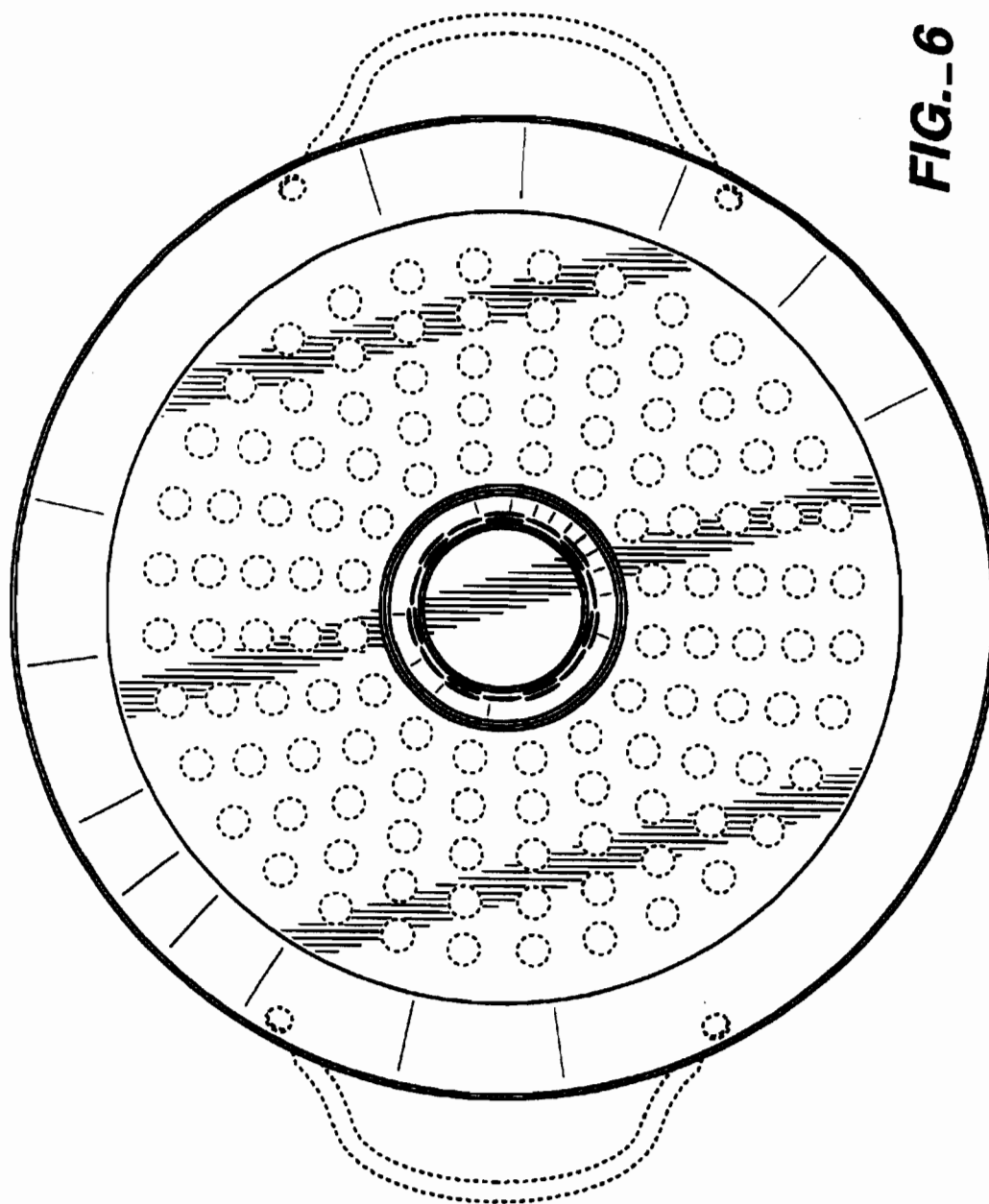


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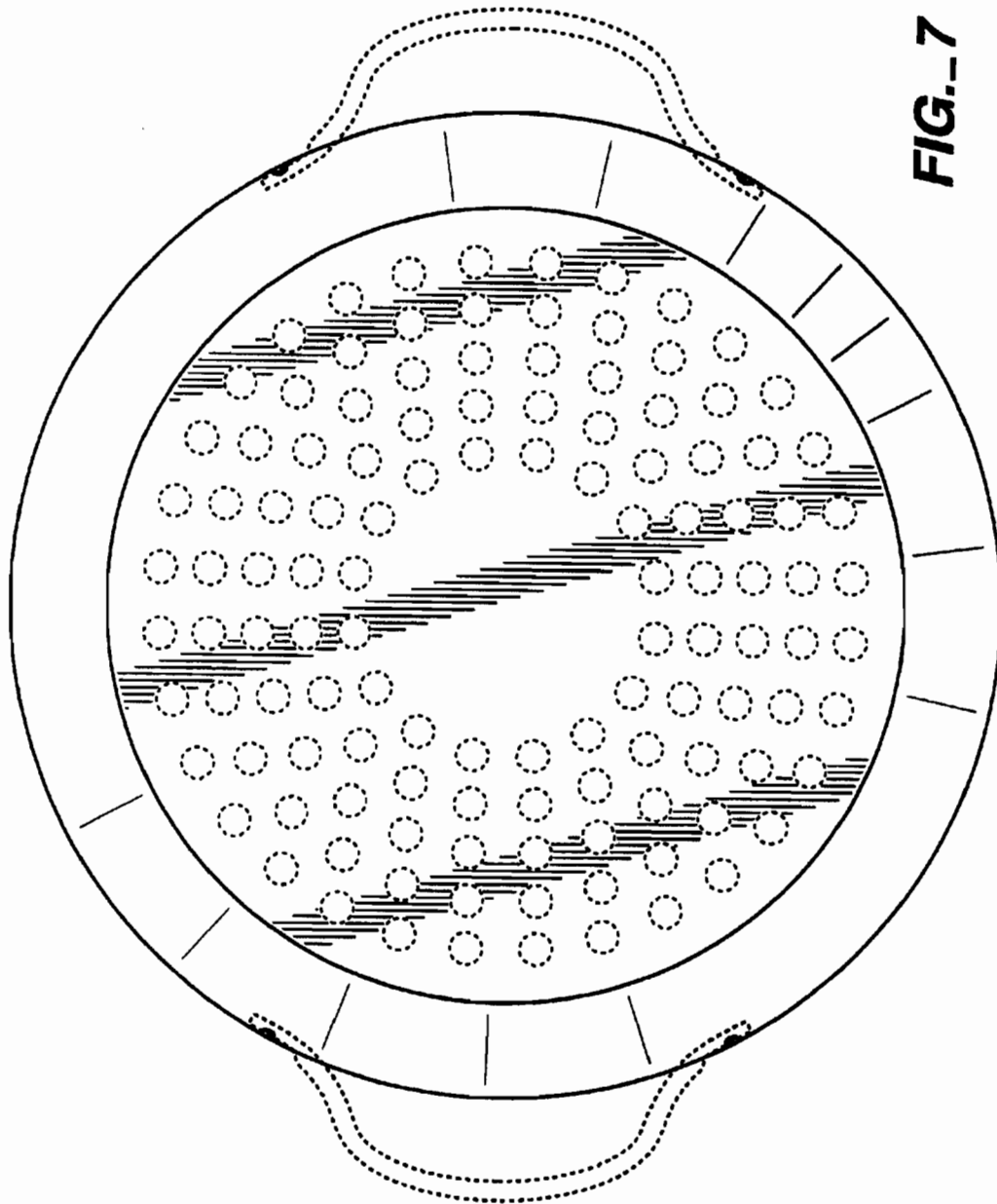


**U.S. Patent**

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**FIG. 7**

## EXHIBIT C



US00D506362S

(12) **United States Design Patent** (10) **Patent No.:** **US D506,362 S**  
**Dow et al.** (45) **Date of Patent:** **\*\* Jun. 21, 2005**

(54) **BARBECUE BASKET FOR CORN AND THE LIKE**

(75) Inventors: **Shannon Dow**, Berkeley, CA (US);  
**Sharon Ellen Kallenberger**, Alameda, CA (US)

(73) Assignee: **Charcoal Companion Incorporated**,  
Oakland, CA (US)

(\*\*) Term: **14 Years**

(21) Appl. No.: **29/199,476**

(22) Filed: **Feb. 13, 2004**

(51) LOC (8) Cl. .... **07-06**

(52) U.S. Cl. .... **D7/686; D7/669**

(58) Field of Search .... **D7/669, 683-687,**  
**D7/672, 652; 99/339, 402, 419, 421 A,**  
**426, 427, 441**

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Charcoal Companion, Product Catalog, 1993, selected pages.

\* cited by examiner

*Primary Examiner*—Terry A. Wallace

(74) *Attorney, Agent, or Firm*—Donald L. Beeson

(57) **CLAIM**

The ornamental design for a barbecue basket for corn and the like, as shown and described.

**DESCRIPTION**

FIG. 1 is a top perspective view of a top of a barbecue basket for corn and the like showing our new design;

FIG. 2 is a top plan view thereof;

FIG. 3 is a right side elevational view thereof, the left side being a mirror image;

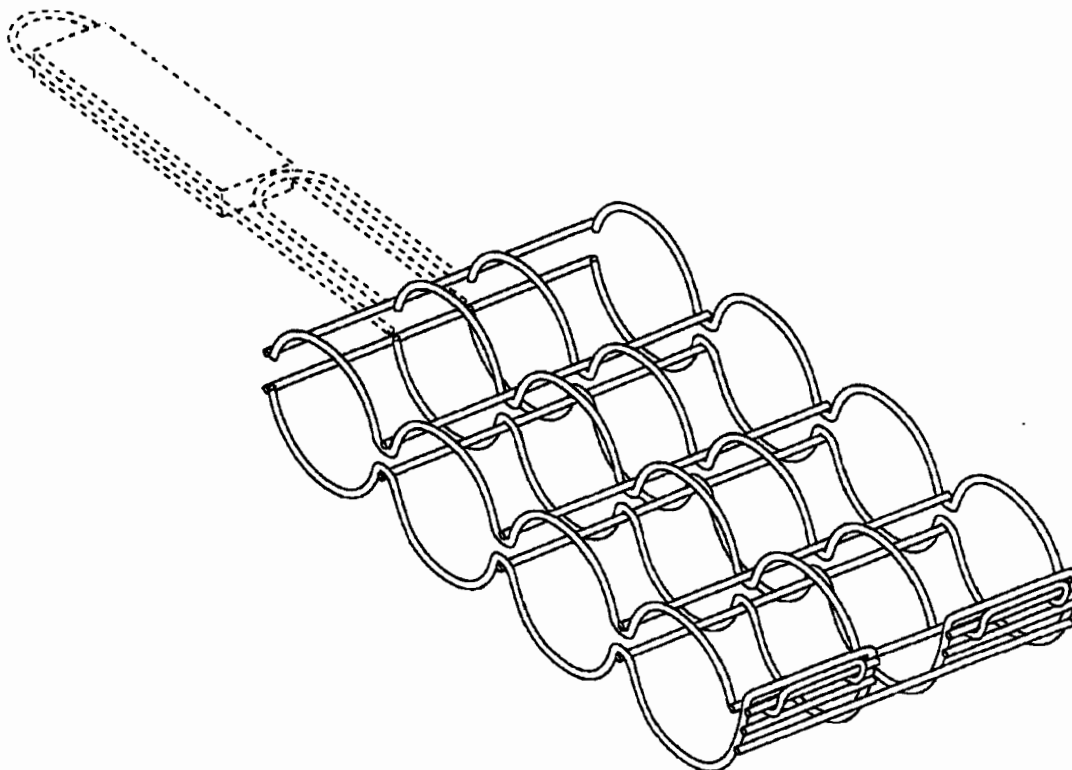
FIG. 4 is a bottom plan view thereof;

FIG. 5 is a front elevational view thereof; and,

FIG. 6 is a rear elevational view thereof.

The broken lines in FIGS. 1-4 showing a handle for the barbecue basket for corn and the like are for illustrative purposes only and form no part of our claimed design.

**1 Claim, 3 Drawing Sheets**



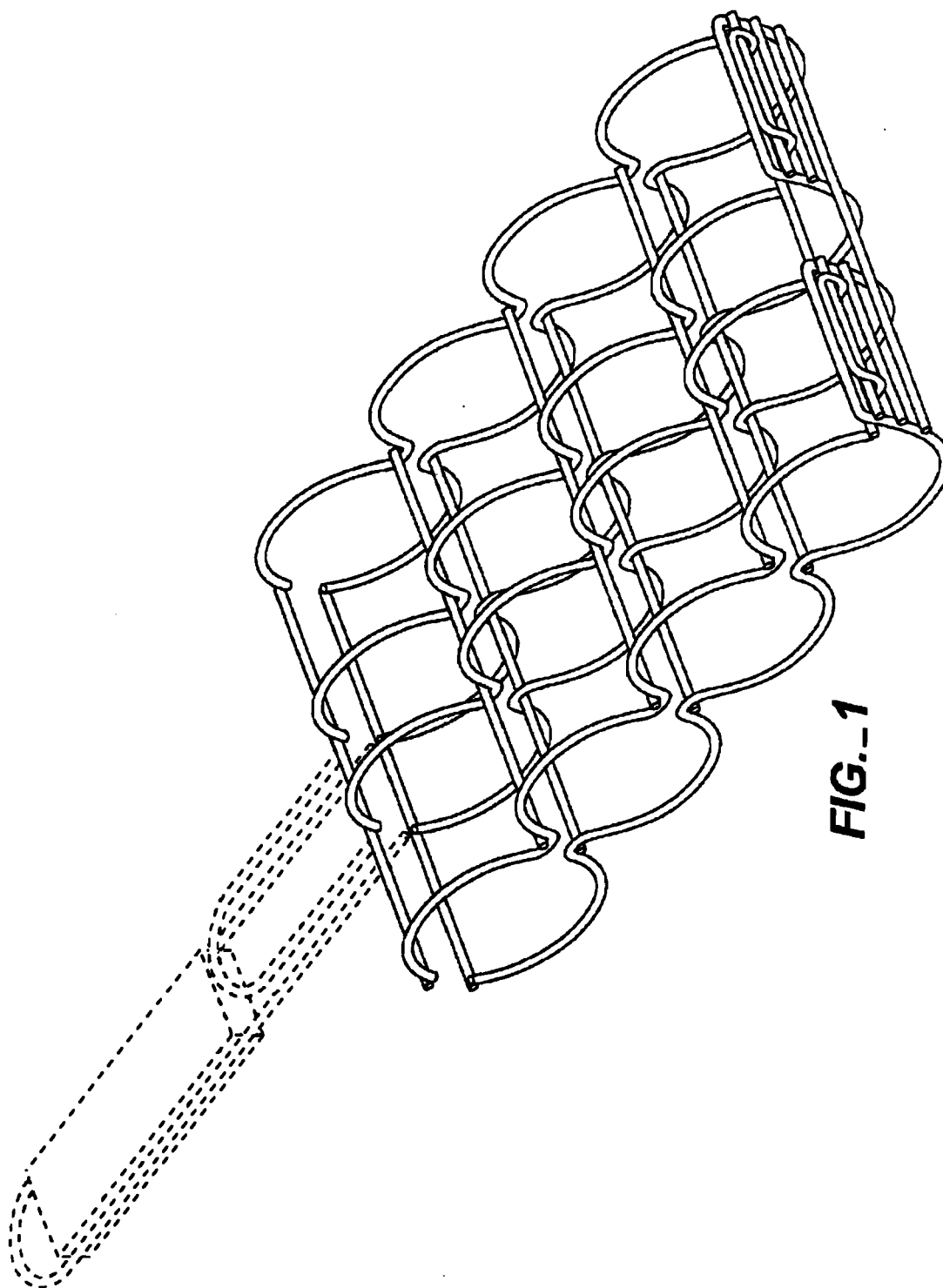


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**Jun. 21, 2005**

**Sheet 1 of 3**

**US D506,362 S**



**FIG. 1**

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Jun. 21, 2005

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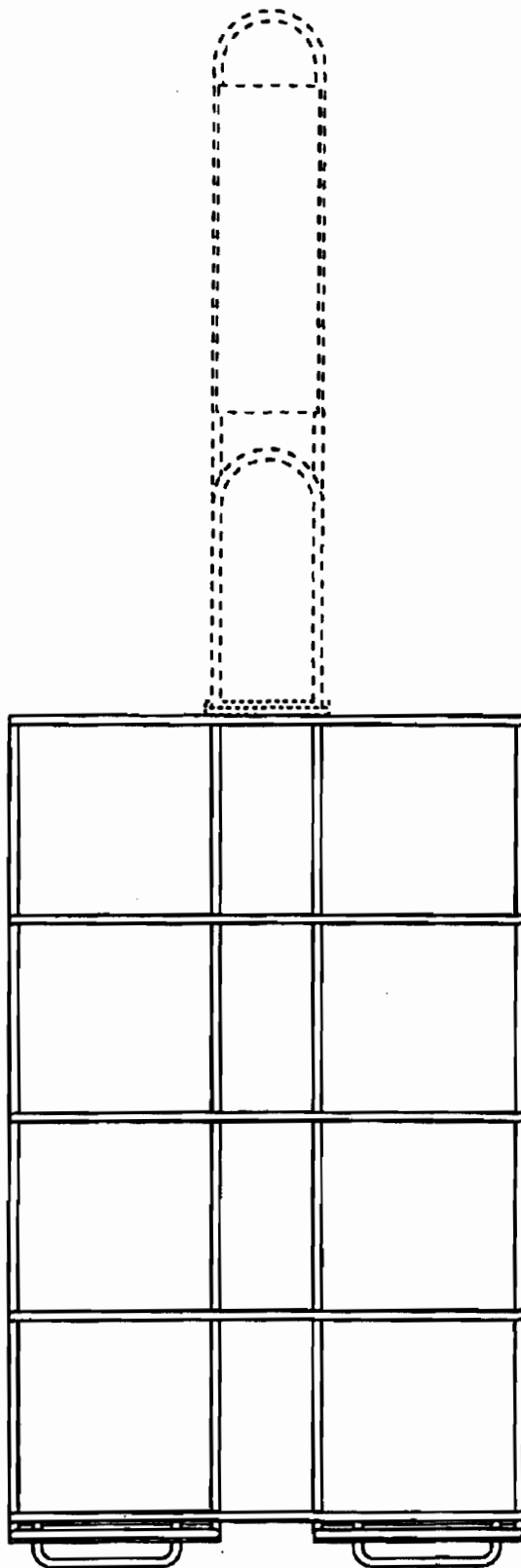


FIG. 2

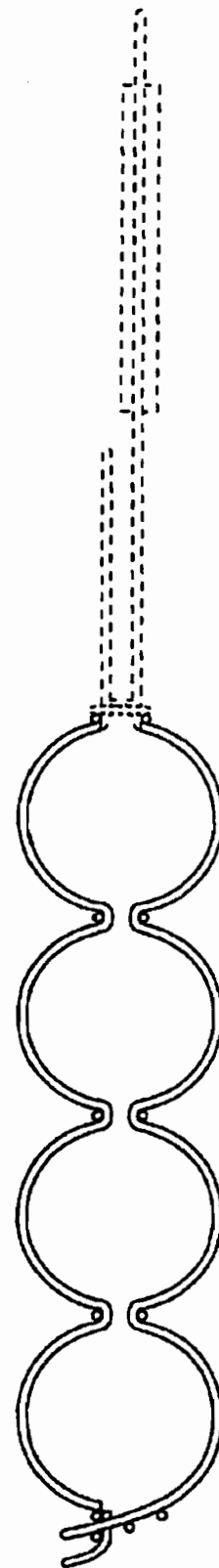


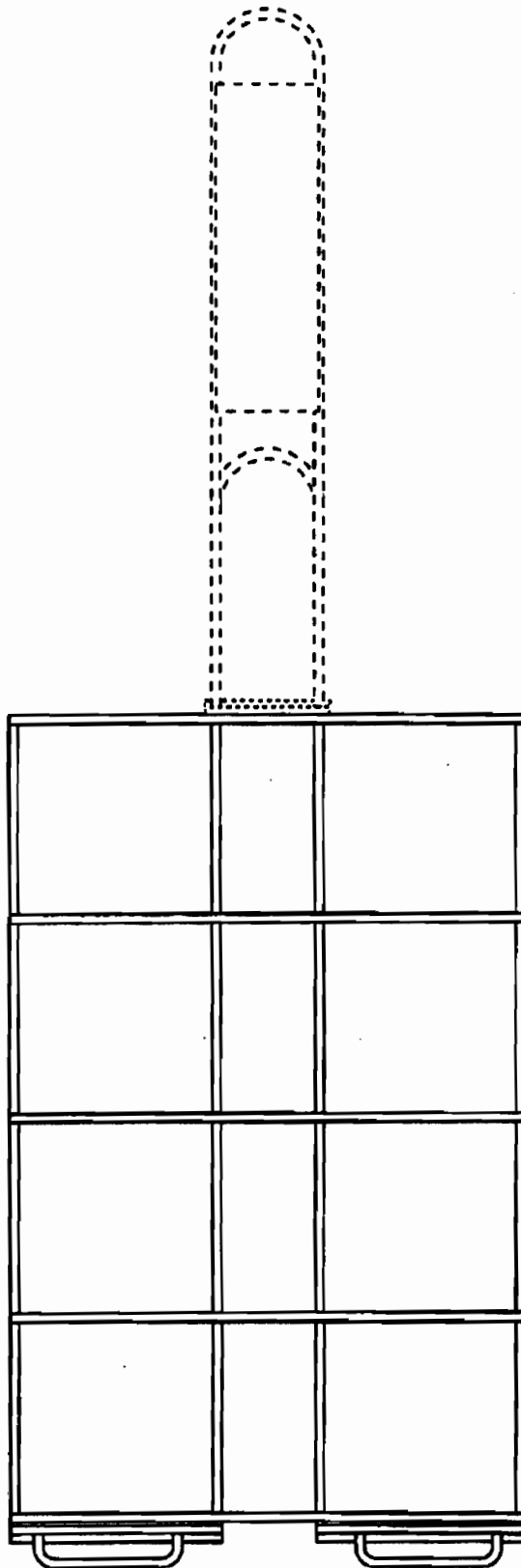
FIG. 3

**U.S. Patent**

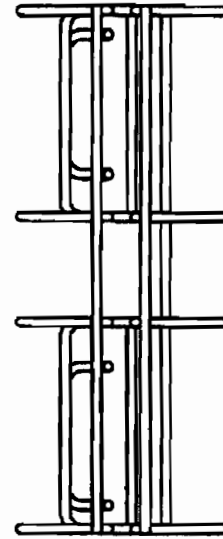
**Jun. 21, 2005**

**Sheet 3 of 3**

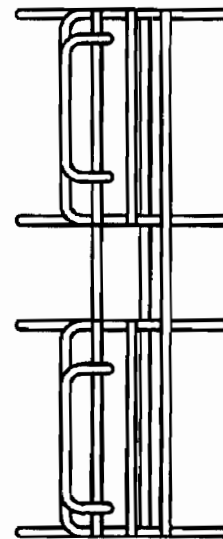
**US D506,362 S**



**FIG. 4**



**FIG. 6**



**FIG. 5**

## EXHIBIT D

EXHIBIT D



US00D521821S

(12) **United States Design Patent** (10) **Patent No.:** **US D521,821 S**  
**Dow et al.** (45) **Date of Patent:** **\*\* May 30, 2006**

(54) **PORTION OF A BARBECUE BASKET FOR CORN AND THE LIKE**

(75) Inventors: **Shannon Dow**, Berkeley, CA (US);  
**Sharon Ellen Kallenberger**, Alameda, CA (US)

(73) Assignee: **Charcoal Companion Incorporated**, Emeryville, CA (US)

(\*\*) Term: **14 Years**

(21) Appl. No.: **29/232,674**

(22) Filed: **Jun. 21, 2005**

#### Related U.S. Application Data

(63) Continuation of application No. 29/199,476, filed on Feb. 13, 2004, now Pat. No. Des. 506,362.

(51) **LOC (8) Cl.** ..... **07-06**

(52) **U.S. Cl.** ..... **D7/686; D7/669**

(58) **Field of Classification Search** ..... D7/669,  
D7/683-687, 672, 652; 99/339, 402, 419,  
99/421 A, 426, 427, 441

See application file for complete search history.

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*Primary Examiner*—Terry A. Wallace

(74) *Attorney, Agent, or Firm*—Donald L. Beeson

#### (57) **CLAIM**

The ornamental design for a portion of a barbecue basket for corn and the like, as shown and described.

#### **DESCRIPTION**

FIG. 1 is a top perspective view of a top of a portion of a barbecue basket for corn and the like showing our new design;

FIG. 2 is a top plan view thereof;

FIG. 3 is a right side elevational view thereof, the left side being a mirror image;

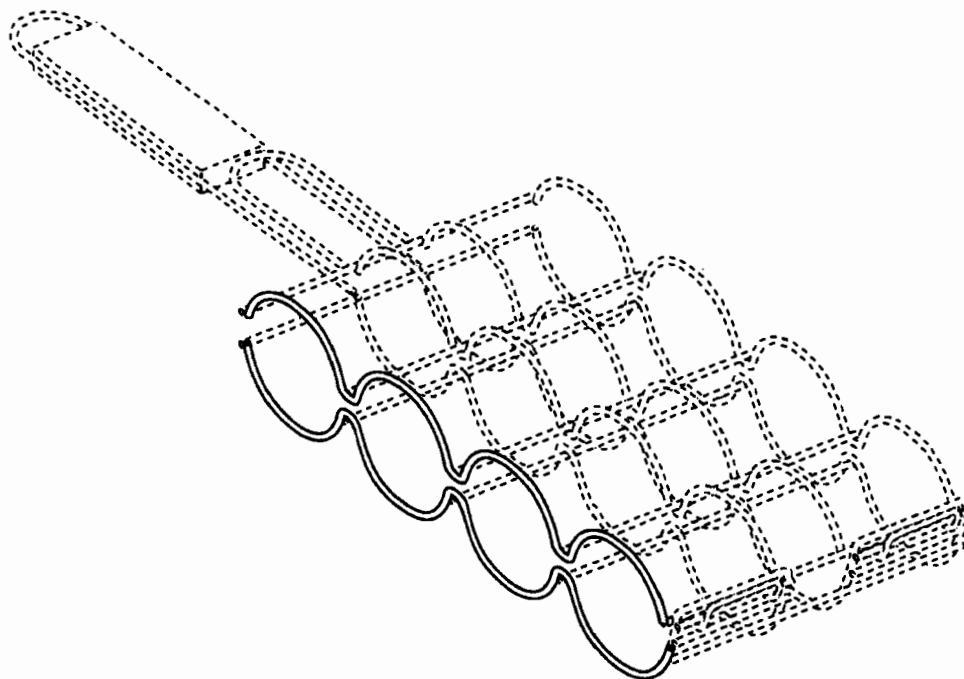
FIG. 4 is a bottom plan view thereof;

FIG. 5 is a front elevational view thereof; and,

FIG. 6 is a rear elevational view thereof.

The broken lines in FIGS. 1-6 are for illustrative purposes only and form no part of our claimed design.

**1 Claim, 3 Drawing Sheets**

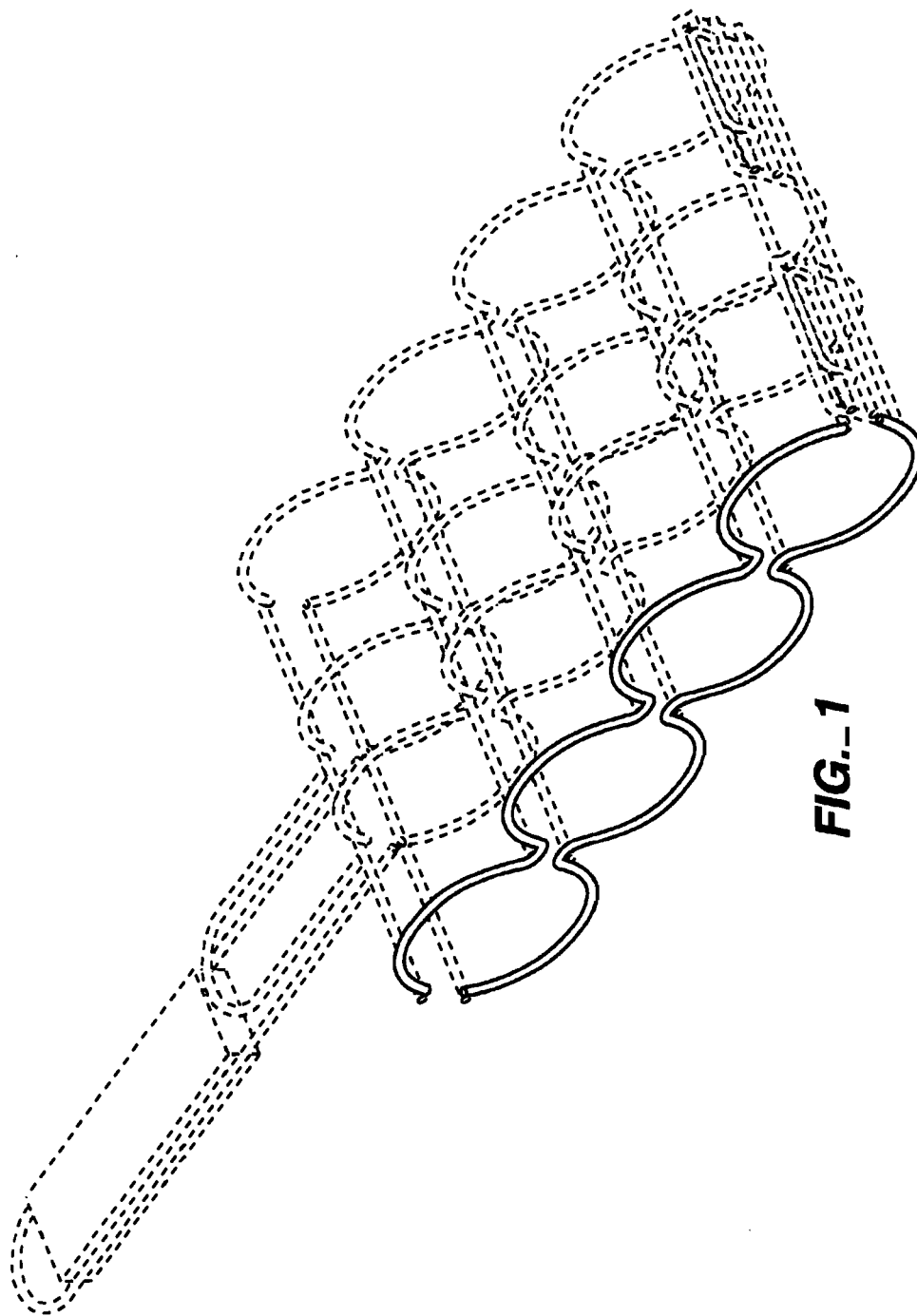


**U.S. Patent**

**May 30, 2006**

**Sheet 1 of 3**

**US D521,821 S**



**FIG. 1**

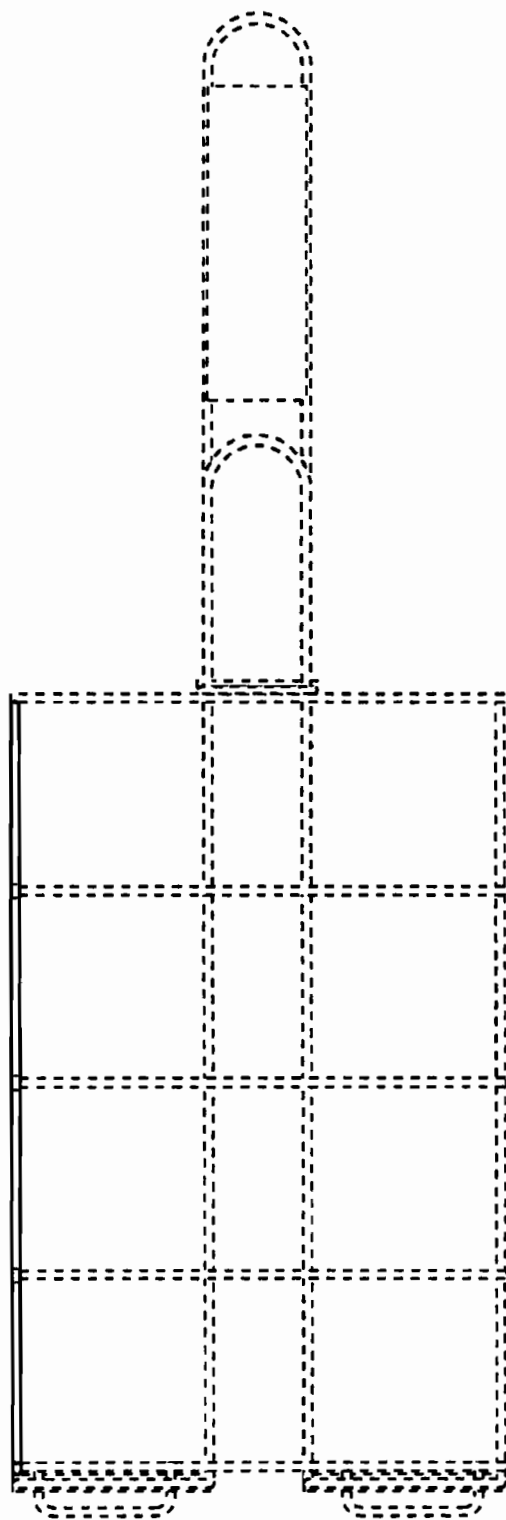


**U.S. Patent**

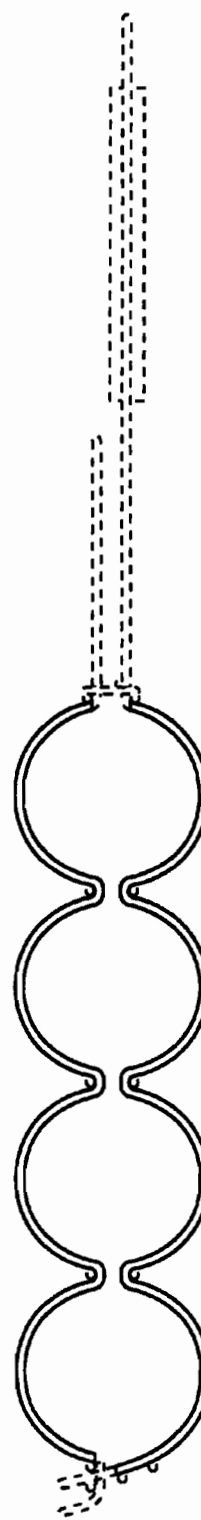
**May 30, 2006**

**Sheet 2 of 3**

**US D521,821 S**



**FIG. 2**



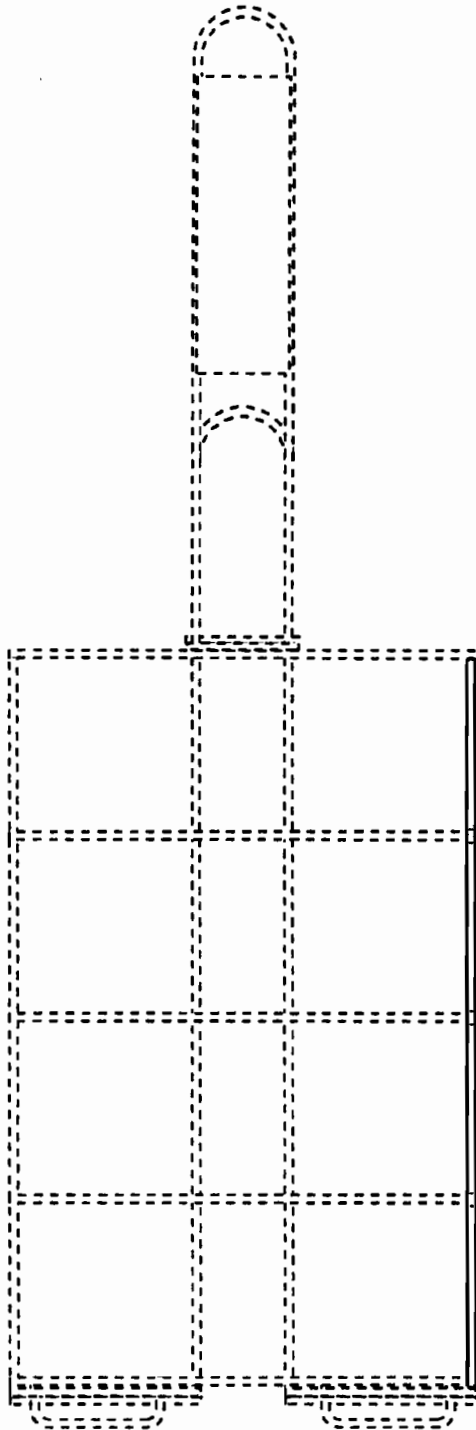
**FIG. 3**

**U.S. Patent**

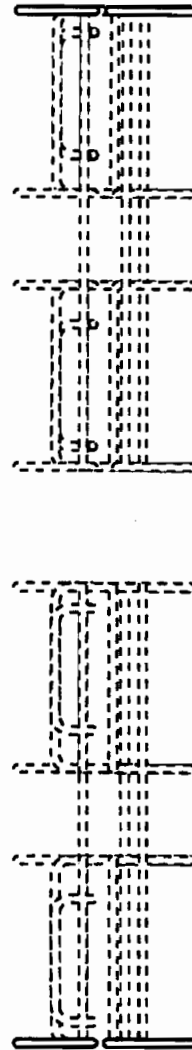
**May 30, 2006**

**Sheet 3 of 3**

**US D521,821 S**



**FIG.\_4**



**FIG.\_6**

**FIG.\_5**

## EXHIBIT E

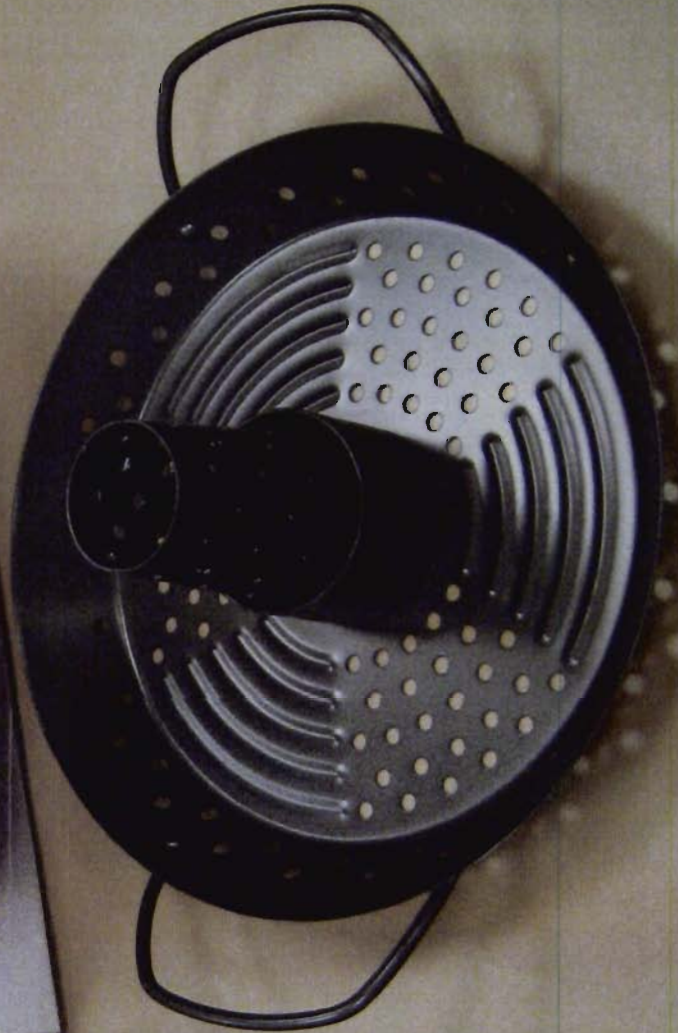


EXHIBIT F

EXHIBIT F



